

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 40

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO MUNICIPALITIES; PROHIBITING, IN CERTAIN CASES, THE
POWERS OF MUNICIPALITIES TO CONDEMN WATER AND WATER RIGHTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 3-27-1 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-26-1) is amended to read:

"3-27-1. POTABLE--AUTHORITY TO ACQUIRE AND OPERATE WATER
FACILITIES.--

A. A municipality, within and without the municipal
boundary, may:

~~[A.]~~ (1) acquire water facilities ~~[which]~~ that
may include but are not limited to:

~~[+1]~~ (a) wells, cisterns and
reservoirs;

~~[+2]~~ (b) distribution pipes and

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1 ditches;

2 [~~(3)~~] (c) pumps;

3 [~~(4) right~~] (d) rights of way;

4 [~~(5)~~] (e) water treatment [~~plant~~]

5 plants; and

6 [~~(6)~~] (f) their necessary appurtenances;

7 and

8 [~~B.~~] (2) use and supply water for:

9 [~~(1)~~] (a) sewer purposes;

10 [~~(2)~~] (b) private use; and

11 [~~(3)~~] (c) public use.

12 B. In acquiring private property pursuant to this
13 section, a municipality may exercise the power of eminent
14 domain pursuant to procedures of the Eminent Domain Code and
15 subject to any applicable provisions of Section 3-27-2 NMSA
16 1978."

17 Section 2. Section 3-27-2 NMSA 1978 (being Laws 1965,
18 Chapter 300, Section 14-26-2, as amended) is amended to read:

19 "3-27-2. POTABLE--METHODS OF ACQUISITION--CONDEMNATION
20 CONVEYANCES AUTHORIZED--LAND FOR APPURTENANCES--PUBLIC AND
21 PRIVATE USE--COMPENSATION.--

22 A. Subject to the provisions of this section,
23 municipalities within and without the municipal boundary may:

24 (1) acquire, contract for or condemn:

25 (a) springs;

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- 1 (b) wells;
- 2 (c) water rights;
- 3 (d) other water supplies; and
- 4 (e) [~~right-of-way~~] rights of way or
- 5 other necessary ownership for the acquisition of water
- 6 facilities; [~~and~~]

7 (2) acquire, maintain, contract for or condemn
 8 for use as a municipal utility privately owned water facilities
 9 used or to be used for the furnishing and supply of water to
 10 the municipality or its inhabitants; and

11 (3) change the place of diversion of any water
 12 to any place selected by the municipality in order to make the
 13 water available to the municipality.

14 B. Municipalities shall not condemn water sources
 15 used by, water stored for use by or water rights owned or
 16 served by an acequia, community ditch, irrigation district,
 17 conservancy district or political subdivision of the state.
 18 The provisions of this subsection apply only to an acequia or
 19 community ditch formed before July 1, 2009.

20 [~~B.~~] C. For the purposes stated in Section 3-27-3
 21 NMSA 1978, a municipality may take water from any stream, gulch
 22 or spring. If the taking of the water materially interferes
 23 with or impairs the vested right of any person [~~who resides~~
 24 ~~upon~~] to the creek, gulch or stream or [~~does~~] to any milling or
 25 manufacturing on the creek, gulch or stream, the municipality

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1 shall obtain the consent of the person with the vested right or
2 acquire the vested right by condemnation and make full
3 compensation or satisfaction for all damages occasioned to the
4 person, subject to the provisions set forth in Subsection B of
5 this section.

6 ~~[G.]~~ D. Any person may lawfully convey to any
7 municipality any water, water right and ditch right or any
8 interest in any water, water right and ditch right held or
9 claimed by the grantor. No change or use of the:

10 (1) water;

11 (2) water right;

12 (3) place of diversion; or

13 (4) purpose for which the water or water right

14 was originally acquired by the grantor, shall invalidate the
15 right of the municipality to use the water or water right.

16 ~~[D.]~~ E. Proceedings to obtain any condemnation
17 authorized in this section shall be in the manner provided by
18 law.

19 F. At any time before or after commencement of a
20 condemnation action authorized by Chapter 3, Article 27 NMSA
21 1978 to condemn any well, cistern, reservoir, distribution pipe
22 or ditch, spring, stream, water or water right, the parties may
23 agree to and carry out a compromise or settlement as to any
24 matter. Within twenty days following the filing of the
25 petition, the condemnee may elect to proceed through an

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1 arbitration process pursuant to the Uniform Arbitration Act by
2 filing a written notice with the condemnor. The arbitrators
3 may award an amount they find to be just compensation for the
4 condemnation of the water or water rights. The arbitrators may
5 decide that the interests of justice are not served by
6 permitting the taking of the condemnee's water or water rights
7 and may order that the arbitration be dismissed and that the
8 property not be taken by the municipality. If the award of the
9 arbitrators exceeds the amount offered by the condemnor
10 pursuant to this subsection by more than one hundred fifteen
11 percent, or if the arbitrators decide that no taking shall
12 occur as permitted in this subsection, or if the arbitration is
13 abandoned by the condemnor, then the arbitrators shall award
14 reasonable and necessary arbitration expenses, including
15 attorney fees, to the condemnee.

16 G. In any condemnation proceeding pursuant to this
17 section, the entity shall have reasonably satisfied the
18 following criteria prior to commencing any such proceeding:

19 (1) the entity has a requirement for water or
20 water rights for public health or safety purposes; or

21 (2) the entity has a requirement for water or
22 water rights for other purposes and:

23 (a) suitable water rights are
24 unavailable for voluntary sale at up to one hundred twenty-five
25 percent of appraised value;

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1 (b) suitable water rights in the public
2 domain are unavailable for purchase at up to one hundred
3 twenty-five percent of appraised value;

4 (c) the entity has implemented a water
5 conservation plan; and

6 (d) the acquisition and purpose is
7 consistent with the regional water plan."

8 Section 3. Section 3-27-3 NMSA 1978 (being Laws 1965,
9 Chapter 300, Section 14-26-3, as amended) is amended to read:

10 "3-27-3. POTABLE--JURISDICTION OVER WATER FACILITIES AND
11 SOURCE.--

12 A. For the purpose of acquiring, maintaining,
13 contracting for, condemning or protecting its water facilities
14 and water from pollution, the jurisdiction of the municipality
15 extends within and without its boundary to:

16 [~~A.~~] (1) all territory occupied by the water
17 facilities;

18 [~~B.~~] (2) all reservoirs, streams and other
19 sources supplying the reservoirs and streams; and

20 [~~C.~~] (3) five miles above the point from which
21 the water is taken.

22 B. In exercising its jurisdiction to acquire,
23 maintain, contract for or condemn and protect the water
24 facilities, the municipality shall not act so as to physically
25 isolate and make nonviable any portion of the water facilities,

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1 within or without the municipality. The municipality may adopt
2 any ordinance and regulation necessary to carry out the power
3 conferred by this section."

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